

Remarks

This Application has been carefully reviewed in light of the Final Office Action dated March 10, 2010. Applicant appreciates the Examiner's consideration of the Application. At the time of the Final Office Action, Claims 1-77 and 81-86 were pending and rejected in the Application. Applicants have amended Claims 1, 6, 28-40, 42, 45-47, 51, 52, 54, 59, and 77. Applicant respectfully requests reconsideration and allowance of all pending claims.

Summary of Interview

Applicant thanks the Examiner for the telephonic interview conducted on May 6, 2010 with Applicant's attorneys Keiko Ichiye (Reg. No. 45,460) and Roshan Mansinghani (Reg. No. 62,429). During the interview, Applicants and the Examiner discussed the Section 103 rejection of Claims 1 and 6. No agreement was reached.

Section 103 Rejection

The Examiner rejects under 35 U.S.C. § 103(a): Claims 1, 28-29, 52, 54, 77, and 81-86 over U.S. Patent Application Publication No. 2001/0006403 of Crocitti ("*Crocitti*") and U.S. Patent Application Publication No. 2004/0167898 of Margolus et al. ("*Margolus*"); Claims 2, 4, 7-10, 12, 18-25, 30, 32, 35-38, 40, 45-49, 53, 55, 57, 60, 65, and 70-74 over *Crocitti*, *Margolus*, and U.S. Patent No. 4,310,883 of Clifton et al. ("*Clifton*"); Claims 3, 5, 11, 15-17, 31, 33, 39, 43-44, 56, 58, 61-64, and 68-69 over *Crocitti*, *Margolus*, *Clifton*, and U.S. Patent Application Publication No. 2002/0188592 of Leonhardt ("*Leonhardt*"); Claims 6, 34, and 59 over *Crocitti*, *Margolus*, *Clifton*, and U.S. Patent Application Publication No. 2002/0078077 of Baumann et al. ("*Baumann*"); Claims 13-14, 41-42, and 66-67 over *Crocitti*, *Margolus*, and U.S. Patent No. 6,882,795 of McMurdie et al. ("*McMurdie*"); Claims 26, 50, and 75 over *Crocitti*, *Margolus*, and U.S. Patent Application Publication No. 2003/0079084 of Gotoh et al. ("*Gotoh*"); and Claims 27, 51, and 76 over *Crocitti*, *Margolus*, and U.S. Patent Application Publication No. 2003/0050729 of Basham et al. ("*Basham*"). Applicant respectfully traverses these rejections.

Applicants respectfully submit that the combinations of references proposed by the Examiner fail to disclose, teach, or suggest the elements specifically recited in Applicants' claims. For example, the cited portions of *Crocitti* and *Clifton* fail to disclose, teach, or suggest the following limitations recited in independent Claim 1:

selecting, by the broker program, a first physical storage device . . . by:
determining that the expiry date of the data file occurs before a
device expiry date associated with the first physical storage device; and
determining that the expiry date of the data file occurs within a
predetermined range of the device expiry date[.]

In rejecting previous versions of Claims 1 and 6, the Final Office Action cites to portions of *Crocitti* and *Clifton*. Final Office Action, pp. 3 and 26. The cited portions of *Crocitti* disclose a “processing module” that compares “the constraints of storage of the information item and the characteristics of the storage means.” ¶ 28. *Crocitti* discloses that an expiry date may be part of the constraints of storage. ¶ 48. The cited portions of *Crocitti*, however, do not disclose how the processing module compares an expiry date to the characteristics of the storage means. Thus, *Crocitti* fails to disclose teach or suggest “selecting, by the broker program, a first physical storage device . . . by: determining that the expiry date of the data file occurs before a device expiry date associated with the first physical storage device; and determining that the expiry date of the data file occurs within a predetermined range of the device expiry date[.]”

The cited portions of *Clifton* disclose:

The comparators 42 check the different flags of the volume record to determine the mount status of the volume, and if the volume expires before the expiration date set for the data set, and also determines if there is sufficient space on the volume for the data set, if the volume is effected by a data separation criteria and whether the planned use of the volume by the data set is permitted.

19:31-38. That is, the cited portions of *Clifton* merely disclose determining whether the volume expires before the expiration date for the data set. This does not disclose, teach, or suggest “determining that the expiry date of the data file occurs before a device expiry date associated with the first physical storage device; and determining that the expiry date of the data file occurs within a predetermined range of the device expiry date,” as recited in amended Claim 1.

For at least these reasons, independent Claim 1 and its dependent claims are allowable under 35 U.S.C. § 103. For analogous reasons, independent Claims 28, 29, 52, 54, and 77 and their respective dependent claims are allowable under 35 U.S.C. § 103. Accordingly, Applicants respectfully request reconsideration and allowance of Claims 1-77 and 81-86.

As another example, the cited portions of *Crocitti* and *Clifton* fail to disclose, teach, or suggest the following limitations recited in amended dependent Claim 6:

storing, for each storage device, the latest expiry date of data files stored on that device, or of data files that are to be stored; and permitting application data to be stored on a storage device if an expiry date of the application data is within a predetermined range occurring after the latest expiry date.

As discussed above, the cited portions of *Crocitti* do not disclose how the processing module compares an expiry date to the characteristics of the storage means. Further, the cited portions of *Clifton* merely disclose determining whether the volume expires **before** the expiration date for the data set. This does not disclose, teach, or suggest “permitting application data to be stored on a storage device if an expiry date of the application data is within a predetermined range occurring after the latest expiry date,” as recited in dependent Claim 6.

For at least these additional reasons, dependent Claim 6 is allowable under 35 U.S.C. § 103. For analogous reasons, dependent Claims 34 and 59 are allowable under 35 U.S.C. § 103. Accordingly, Applicants respectfully request reconsideration and allowance of Claims 6, 34, and 59.

No Waiver

Applicant’s arguments are made without prejudice or disclaimer. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the additional statements. The distinctions between the applied references and the claims are provided as examples only and are sufficient to overcome the rejections. Applicant reserves the right to discuss additional or other distinctions in a later response or on appeal, if appropriate.

Conclusion

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicant respectfully requests full allowance of all pending Claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact the undersigned attorney for Applicant at the convenience of the Examiner.

Although Applicant believes no fees are due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
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